

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Federal-State Board on)	
Universal Service)	CC Docket No. 96-45
)	
Petition for FCC Agreement in)	
Redefining the Service Areas of)	
Rural Telephone Companies in)	
the State of South Dakota)	

**REPLY COMMENTS OF THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

The South Dakota Public Utilities Commission (“SDPUC”) submits these reply comments in response to the comments submitted by the South Dakota Telecommunications Association (“SDTA”). SDTA opposes the SDPUC’s proposal for redefining certain rural incumbent local exchange carriers’ (“ILECs”) service areas. The SDPUC does not believe that SDTA’s comments provide any bases for the Commission to decline to concur with the SDPUC’s redefinitions of certain study areas.

I. BACKGROUND

As explained in the SDPUC’s Petition for FCC Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of South Dakota (“SDPUC Petition for Redefinition”), the SDPUC designated RCC Minnesota, Inc. (“RCC”) and Wireless Alliance, L.L.C. (WALLC) d/b/a Unicel as eligible telecommunications carriers (“ETCs”) in certain areas of northeastern and southeastern South Dakota. The proposed redefinitions affect the service areas of the following rural incumbent LECs: James Valley Cooperative Telephone Company

(“James Valley”), Venture Communications Cooperative (“Venture”), Interstate Telecommunications Cooperative, Inc. (“ITC”), Sioux Valley Telephone Company (“Sioux Valley”), PrairieWave Community Telephone, Inc. (“PrairieWave”), and Alliance Communications Cooperative, Inc. (“Alliance”).¹

The SDPUC’s Petition for Redefinition summarizes the extensive analysis used by the SDPUC to determine whether to redefine the affected study areas. A review of the issues raised by SDTA reveals that SDTA has not presented any issues that would require the Commission to deny the proposed redefinitions.

II. THE SDPUC’S REDEFINITIONS SHOULD BE APPROVED

SDTA raises three issues in its comments wherein it requests that the Commission deny the SDPUC’s proposed redefinitions. The issues are: 1) the proposed redefinitions are incomplete; 2) the redefinitions would reduce universal service benefits to consumers; and 3) the redefined service areas would have the effect of creamskimming and would affect the ILECs’ ability to serve their entire study areas. The SDPUC will address each of these issues.

1. The proposed redefinitions are not incomplete.

The first issue raised by SDTA alleges that the SDPUC’s proposed redefinitions are incomplete. SDTA uses ITC’s proposed redefined service area as an example. SDTA notes that the SDPUC designated ITC’s service area as Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond, Toronto, Waubay, Webster, and Willow Lake. SDTA then asks what happens with the other wire centers of Brookings, Chester, Elkton, Hendricks, Nunda, Sinai, Wentworth and White.

¹ Alliance has two study areas, Splitrock and Baltic. Therefore, the SDPUC will refer to Alliance (Splitrock) and Alliance (Baltic).

The SDPUC does not believe that this is a difficult question to answer. To the extent some wire centers are redefined, any remaining wire centers would continue to be grouped together as a separate service area. Further, in response to SDTA's statement that it "is not clear whether an existing ETC can relinquish its ETC designation in one of the wire centers or whether it would have to relinquish designation in all of the wire centers" the same answer applies: the remaining wire centers are a separate service area and in order to relinquish ETC status, an ETC would be required to request relinquishment of its ETC designation in all of the wire centers.²

2. SDTA has not shown that redefinitions would reduce universal service benefits to consumers.

The second issue raised by SDTA is that redefinitions would reduce universal service benefits to consumers. SDTA brings up the possibility of an ETC seeking to relinquish its ETC status in the higher cost service areas while retaining its ETC designation in lower cost service areas. The SDPUC recognized this as a possibility which is one of the reasons why it decided to group wire centers together instead of designating each wire center as a separate service area. However, SDTA dismisses the grouping of wire centers by stating that "there is no record evidence to support the SDPUC's actions as a solution to the identified problem." This statement is surprising since it is totally contrary to the evidence presented by the SDTA members.

For example, the Sioux Valley wire centers of Dell Rapids, Colton, and Humboldt were designated as a separate wire center. Dell Rapids has a density of 15.2 households per square mile, while Humboldt's density is 5.1 and Colton's is 5.3. Thus, under the SDPUC's redefinitions, an ETC that wants to stop serving the Humboldt or Colton wire center would also be required to stop serving the higher density wire center of Dell Rapids. Similarly, for Venture,

² The SDPUC also notes that if ITC or any of the other affected ILECs were confused by the SDPUC's order in this case, they could have submitted a request to the SDPUC for clarification. The SDPUC further points out that its order designating RCC and WALLC as ETCs was not appealed by any of the parties to the proceeding.

an ETC that decided it would like to relinquish its ETC designation in the very low density areas of Langford and Pierpont (which both have 1.9 households per square mile) would then be forced to also relinquish its ETC status for Venture's highest density wire center which is Sisseton. For ITC, an ETC that wanted to relinquish its ETC status for ITC's very low density wire center of Bradley (1.6) would also need to relinquish Lake Norden, ITC's highest density wire center. Far from there being "no record evidence" that supports the grouping of wire centers, there is ample evidence and this evidence was submitted by the SDTA companies.

SDTA also alleges that even if ETCs do not relinquish their ETC status in some areas "it is likely that competitive pressure would force them to focus service efforts on the same limited area served by other competitive ETCs, such as RCC." The SDPUC believes that this statement fails to take into account the conditions placed on the competitive ETCs in question. These conditions include yearly reports listing the number of unfulfilled requests to provide service and the reasons why service was not provided; annual plans for construction of new facilities and service enhancements; and the location and cost of material capital expenditures made by the ETCs during the preceding year. These conditions are designed to ensure that competitive ETCs meet their statutory obligation of offering the supported services throughout their designated service areas. An ETC that fails to meet this obligation will be faced with the revocation of its ETC designation.

3. The proposed redefinitions do not have creamskimming effects.

SDTA's final issue is that the proposed service areas would have the effect of creamskimming and would affect the ILECs' ability to serve their entire study areas. SDTA states that the proposed redefinitions fail to consider cost differentials in sparsely populated areas and allow ETCs to serve the main population centers of rural ILECs. SDTA mainly uses Venture as an example of how SDTA believes the redefinitions will allow creamskimming.

First, as already outlined in the SDPUC's Petition for Redefinition, the SDPUC conducted an extensive creamskimming analysis. Further, what SDTA fails to point out is that for many of the redefined service areas, including Venture's, the wire centers that are *not* included in the new proposed service areas are *non-contiguous* wire centers. The SDPUC's decision specifically cited to an FCC order which found that "requiring a carrier to serve a non-contiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers."³

SDTA also alleges that the proposed redefinitions would "impact the ability of the ILECs to serve their entire study areas." As an example, SDTA states that Venture averages its costs and revenues from higher-cost and lower-cost exchanges and is then able to provide more services to the higher-cost, lower-density exchanges. The SDPUC is not clear as to why this type of averaging is affected by the proposed redefinitions. As noted in its decision, an incumbent LEC will continue to receive support based on the cost of serving its entire service area and the redefinitions will not affect the amount of that support.

Another claim by SDTA is that the SDPUC conducted an incomplete creamskimming analysis for Venture, Sioux Valley, and Alliance (Splitrock). This is incorrect. These companies have disaggregated their support. The SDPUC's decision found that "when a company disaggregates its support, creamskimming concerns are minimized since any competitor which serves the low-cost customers will receive much less in high-cost support for those customers." This is consistent with the Commission's finding that when a rural company disaggregates its

³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, para. 190 (1997).

support, "[t]here are fewer issues regarding inequitable universal service support and concerns regarding the incumbent's ability to serve its entire study area...."⁴

In its decision, the SDPUC specifically noted the disaggregation plan of Alliance (Splitrock). Alliance (Splitrock) split its wire centers into two zones with the higher cost areas receiving support of \$10.93 per month and the lower cost areas receiving only \$2.24 per month. Thus, a competitive ETC which serves an Alliance (Splitrock) wire center will not be creamskimming because it will receive only \$2.24 for the more urban, lower cost areas.

SDTA then quotes from the Commission's *Highland Cellular* order in which the Commission found that for study areas that include "wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities."⁵ However, what SDTA fails to point out is the *example* the FCC used of a study area with "highly variable population densities." The Commission's example regarded a company whose highest density wire centers had persons per square mile that ranged from 98 to 143 as compared to the lower density wire centers with population densities of 18 to 22 persons per square mile.⁶ The SDPUC notes that Venture's highest density wire center is 7.2 persons per square mile, and its lowest is 0.2. This is a variation of 7 persons, not the 80 to 122 person variation as found in the Commission's example of a study area with highly variable population densities.

SDTA then claims that the companies' disaggregation plans are not effective because they are outdated. However, the ILECs did not present any specific evidence that would show that the costs contained in their disaggregation plans were no longer valid. Thus, the SDPUC

⁴*Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, para. 32, fn 96 (rel. Feb. 24 2004) (*Highland Cellular*).

⁵ *Id.* at para. 32.

⁶ *Id.* at paras. 31, 32.

found that “based on its review of the record, the [SDPUC] does not find that the three companies erroneously disaggregated and does not find that these areas present creamskimming concerns.”

III. CONCLUSION

The SDPUC conducted a creamskimming analysis in accordance with the Commission’s prior decisions and federal law. The SDPUC’s decision regarding the proposed redefinitions also took into account the recommendations of the Federal-State Joint Board on Universal Service. Therefore, the SDPUC respectfully requests that the Commission grant its concurrence with the proposal to redefine the service areas of James Valley, Venture, ITC, Sioux Valley, PrairieWave, Alliance (Splitrock), and Alliance (Baltic).

Respectfully submitted,

/s/ Rolayne Ailts Wiest
Rolayne Ailts Wiest
SDPUC Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
(605) 773-3201

Dated: September 13, 2005

CERTIFICATE OF SERVICE

I, Tina Douglas, do hereby certify that I have on this 13th day of September, 2005, had copies of the Reply Comments of the South Dakota Public Utilities Commission delivered to the following, via first-class, U.S. mail:

Richard D. Coit
Executive Director and General Counsel
South Dakota Telecommunications Association
320 East Capitol Avenue
Pierre, SD 57501

Benjamin H. Dickens, Jr.
Mary J. Sisak
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW
Washington, DC 20037

Talbot J. Wiczorek
Gunderson, Palmer, Goodsell & Nelson, LLP
Assurant Building
440 Mt. Rushmore Road
P.O. Box 8045
Rapid City, SD 57709-8045

/s/ Tina Douglas
Tina Douglas